REMARKS

Applicants appreciate the detailed examination evidenced by the Office Action mailed March 29, 2004 (hereinafter "Office Action"). Applicants have canceled Claims 23-28 and 36-42. Applicants have also amended independent Claim 29 to incorporate recitations from Claim 30, and have canceled Claim 30. Applicants have added new Claims 43 and 44 to depend from Claim 35, and have also added new Claims 45-52, which are computer program product analogs of Claims 29-35, 43 and 44.

Regarding the non-obviousness double-patenting rejections, Applicants submit herewith an appropriate Terminal Disclaimer. Applicants further submit that amended independent Claim 29 and corresponding new independent Claim 45 are patentable over the cited references for at least the reasons discussed below.

Independent Claims 29 and 45 are patentable

Claim 29 has been amended to include recitations from Claim 30, and now recites:

> A method of anticipating a device in a networked computer system is to be affected by an anomaly, comprising:
>
> sequentially polling a plurality of devices of the networked computer system in a predetermined sequential order for information relating to network communications thereof;
>
> detecting an anomaly responsive to polling of a first device in the computer system using network-based intrusion detection techniques comprising analyzing data entering into a plurality of hosts, servers, and computer sites in the networked computer system; and
>
> determining a second device that is anticipated to be affected by the anomaly by using pattern correlations across the plurality of hosts, servers, and computer sites following the detection of the anomaly and prior to polling of the second device.

New independent Claim 45 is a computer program analog of amended independent Claim 29.

The Office Action alleges that Claim 30, which substantially corresponds to amended Claim 29, is obvious over a combination of U.S. Patent Application Publication No. 2003/0110392 to Aucsmith et al. ("Aucsmith"), U.S. Patent No. 6,119, 236 to Shipley

("Shipley") and U.S. Patent No. 5,710,885 to Bondi ("Bondi"). *See* Office Action, p. 10. In particular, the Office Action asserts that Aucsmith discloses all of the recitations of Claim 30 except "analyzing data entering into a plurality of hosts, servers, and computer sites" and polling of a plurality of devices "in a predetermined sequential order." *See* Office Action, pp. 4 and 10. The Office Action asserts "Aucsmith and Shipley don't expressly mention the plurality of devices are *polled in a predetermined sequential order*" but asserts that Bondi provide such teachings and that it would have been obvious to combine Bondi with Aucsmith and Shipley "since one would have been motivated to prevent the unauthorized intrusion in the computer networks [Shipley, col. 1 lines 15-16]." Office Action, pp. 10 and 11. Applicants respectfully disagree.

To establish a prima facie case of obviousness, the prior art reference or references when combined must teach or suggest *all* the recitations of the claims, and there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. M.P.E.P. §2143. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. M.P.E.P. §2143.01, citing *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990). Evidence of a suggestion, teaching, or motivation to combine must be clear and particular, and this requirement for clear and particular evidence is not met by broad and conclusory statements about the teachings of references. *In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). There must be particular evidence from the prior art as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed. *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000).

The Office Action cites column 3, lines 31-40 of Bondi as allegedly teaching polling in a predetermined order. *See* Office Action, p. 10. This passage merely describes an ordered transmission of polling messages, so the proposed combination of Aucsmith, Shipley and Bondi would not disclose or suggest "determining a second device that is anticipated to be affected by the anomaly by using pattern correlations across the plurality of hosts, servers, and computer sites ***following the detection of the anomaly and prior to polling of the second device***" as recited in Claim 29, or corresponding recitations of Claim 45, as Bondi and the

other cited references provide no teaching or suggestion of timing relationships between anomaly identification as described in Aucsmith and polling as described in Bondi. Accordingly, even if combined, the cited references do not disclose or suggest all of the recitations of independent Claims 29 and 45.

Moreover, the Office Action fails to provide the requisite evidence of a motivation or suggestion to combine the references. The cited evidence for combining Bondi with Aucsmith and Shipley (Shipley, col. 1 lines 15-16) merely indicates that it is desirable to prevent unauthorized intrusion, but provides no teaching or suggestion that techniques such as those described Aucsmith and Shipley could be modified to include polling as described in Bondi to provide such a result. Accordingly, the Office Action also fails to provide the clear and particular evidence from the prior art of a motivation to combine the cited references required to support a *prima facie* case of obviousness under 35 U.S.C. § 103. For at least the foregoing reasons, Applicants submit that independent Claims 29 and 45 are patentable.

The dependent claims are patentable

Applicants submit that dependent Claims 30-35, 43, 44 and 46-52 are patentable at least by virtue of the patentability of the respective ones of independent Claims 29 and 45 from which they depend. Applicants further submit that several of the dependent claims are separately patentable.

For example, Claim 44 recites "wherein determining a second device that is anticipated to be affected by the anomaly is followed by comprising sending an alert to the second device prior to polling of the second device." Claim 52 includes corresponding computer program product recitations. As noted above, the cited references, whether taken alone or in combination, do not disclose or suggest specific recited relationships between polling and detection of anomalies and, for at least similar reasons, the cited references also do not disclose or suggest the specific timing relationships between polling and alerts recited in Claims 44 and 52. For at least these reasons, Applicants submit that Claims 44 and 52 are separately patentable.

Conclusion

As all of the claims are now in condition for allowance, Applicants respectfully request allowance of the claims and passing of the application to issue in due course. Applicants urge the Examiner to contact Applicants' undersigned representative at (919) 854-1400 to resolve any remaining formal issues.

Respectfully submitted,

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